

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

RHONDA LEAVERTON §
§
V. § CIVIL ACTION NO. G-11-002
§
BAC HOME LOANS SERVICING, L.P., §
and BANK OF AMERICA, N.A. §

O R D E R

On August 8, 2011, Plaintiff, Rhonda Leaverton filed a “Motion for Leave of Court and (sic) File Plaintiff’s First Amended Complaint” (Instrument no. 16). The Motion is opposed.

In part, the Motion seeks leave to amend “to cure any defects in its cause of action for wrongful foreclosure based upon Defendants’ Motion to Dismiss.” The Court notes that Rule 15(a) of the Federal Rules of Civil Procedure severely restricts the District Court’s discretion to dismiss a case without granting at least one opportunity to amend where a more carefully drafted complaint might state a claim. Silva v. Bieluch, 351 F.3d 1045, 1048 (11th Cir. 2003) see also, Mills v. Injury Benefits Plan of Schepps-Foremost, Inc., 851 F.Supp. 804 (N.D. Tex. 1993). Consequently, rather than address the merits of the Defendant’s Motion only to then, if necessary, invite an amended complaint, the Court would prefer to first grant Leaverton the opportunity to state her best case.

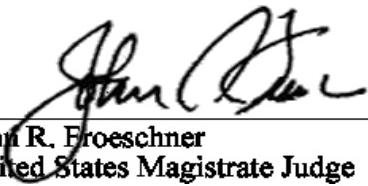
Leaverton, however, also seeks to drastically change her lawsuit by abandoning the claims the Defendants seek to have dismissed and adding completely new claims. Based upon her Motion the Court is unable to determine whether such an amendment would cause undue delay in these proceedings or prejudice the Defendants.

It is, therefore, **ORDERED** that the Defendants **SHALL** file their response to the Plaintiff's "Motion for Leave" on or before August 26, 2011.

It is further **ORDERED** that Leaverton **SHALL** file her reply, if any, to the Defendants' response, on or before September 2, 2011.

It is further **ORDERED** that the Order (Instrument no. 17) setting the current briefing schedule regarding the Defendant's Motion to Dismiss entered on August 8, 2011, is **VACATED** and consideration of the Motion to Dismiss (Instrument no. 14) will be **DEFERRED** until the resolution of the Plaintiff's instant Motion.

DONE at Galveston, Texas, this 9th day of August, 2011.



John R. Froeschner
United States Magistrate Judge